



4148-25P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice for Proposed Model Family Foster Home Licensing Standards

**AGENCY:** Administration for Children and Families, HHS

**ACTION:** Notice; Request for Comments

**SUMMARY:** The Family First Prevention Services Act (FFPSA) directs the U.S.

Department of Health and Human Services (HHS) to identify “reputable model licensing standards with respect to the licensing of foster family homes. In response to this directive, the Children’s Bureau (CB) solicits comments on the proposed National Model Family Foster Home Licensing Standards.

**DATES:** Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.
- Email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include [docket number and/or RIN number] in subject line of the message.
- Mail: Submit written comments to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW., Washington, DC 20024. Please be

aware that mail may take an additional 3 to 4 days to process due to security screening of mail.

**FOR FURTHER INFORMATION CONTACT:** Kathleen McHugh, Director, Policy Division, Children’s Bureau, 330 C Street, SW., Washington, DC 20201. Email address: cbcomments@acf.hhs.gov. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

**(1) Legislative Context**

The President signed the Bipartisan Budget Act of 2018, Public Law (Pub. L.) 115-123 into law on February 9, 2018. Pub. L. 115-123 includes the FFPSA in Division E, Title VII. Section 50731 of the FFPSA directs HHS to “identify reputable model licensing standards with respect to the licensing of foster family homes (as defined in section 472(c)(1) of the Social Security Act).”

By April 1, 2019, title IV-E agencies, which include all states and 12 tribes, must provide the HHS specific and detailed information about:

- Whether the state or tribal agency foster family home licensing standards are consistent with the model licensing standards identified by HHS, and if not, the reason; and
- Whether the state or tribal agency waives non-safety licensing standards for relative foster family homes (pursuant to waiver authority provided by section 471(a)(10)(D) of the Act), and if so, how caseworkers are trained to use the waiver authority and whether the agency has developed a process or provided tools to assist caseworkers in waiving these non-safety standards to quickly place children with relatives.

States and tribes have a long history of developing and implementing their own foster family home licensing standards. These standards are typically included in statutes, codes, or regulations, but may also be included in policy documents or guidance. In reference to the title IV-E program, section 471(a)(10) of the Act requires title IV-E agencies to develop plans that provide for the establishment and maintaining of standards for foster family homes and child care institutions. These standards must be reasonably in accord with related standards developed by national organizations, including standards related to admission policies, safety, sanitation, protection of civil rights, and permit the use of the reasonable prudent parent standard.

## **(2) Reviewing Foster Family Home Licensing Standards**

We are proposing one set of standards for comment to apply to relatives and non-relatives, as well as state and tribal title IV-E agencies.

Prior to drafting these standards, CB:

- reviewed several state and tribal foster family licensing standards that represented a mix of population densities, state and county administered states, and a range of geographic locations;

- examined the “Model Family Foster Home Licensing Standards” published by the National Association for Regulatory Administration (NARA Standards);
- reviewed the “Development and Implementation of Tribal Foster Care Standards” published by the National Indian Child Welfare Association (NICWA); and
- consulted guidelines, recommendations, and best practices for foster care services including the following:
  - Council on Accreditation Family Foster Care and Kinship Care Program Accreditation Guidelines; and
  - Child Welfare League of America (CWLA) Standards of Excellence for Family Foster Care Services.

The CB relied heavily upon the NARA standards in drafting the proposed National Model Family Foster Home Licensing Standards. The NARA standards were developed by attorneys at Generations United and the American Bar Association who researched family foster care licensing standards in state codes, regulations, and policies for each state and the District of Columbia.<sup>1</sup> The current NARA standards use model language from state licensing standards and language from the CWLA and the Council on Accreditation with the goal to create reasonable and achievable safety standards for family foster home licensing. NICWA assisted the Council on Accreditation with developing foster care and kinship care standards used to accredit public and private agencies that address the unique needs of Native children and account for the protections of the Indian Child Welfare Act.

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<sup>1</sup> For the research results, please see:  
<http://www.grandfamilies.org/Portals/0/Improving%20Foster%20Care%20Licensing%20Standards.pdf>

CB assessed whether these materials shared purposes, standards, and categories to support the conclusion that the NARA standards were appropriate to use as a main source for the National Model Family Foster Home Licensing Standards. Through this review, CB determined that while it is important for standards to be flexible for title IV-E agency implementation, overall, the standards reviewed shared many commonalities. Further, the NARA standards are based in significant research and input from experts in the field; therefore, we consider them the best available resource to base a federal standard on, and reasonably flexible for title IV-E agency implementation.

CB did not examine the following subject areas because this was outside the scope of the legislative requirement:

- Foster home licensing procedures;
- Emergency placement procedures;
- Re-licensure procedures;
- Procedures for pre-service training;
- Care of children after placement in a licensed foster home; and
- Post-licensing requirements, such as foster parent recordkeeping and reporting.

## **II. Overview of the Proposed National Model Family Foster Home Licensing Standards**

The proposed standards are categorized into eight categories that closely resemble the NARA standards:

- A. Foster Home Eligibility
  - a. Threshold Requirements
  - b. Physical and Mental Health

- c. Background Checks
  - d. Home Study
- B. Foster Family Home Health and Safety
  - a. Living Space
  - b. Condition of Home
- C. Foster Home Capacity
- D. Foster Home Sleeping Arrangements
- E. Emergency Preparedness, Fire Safety, and Evacuation Plans
- F. Transportation
- G. Training
- H. Foster Parent Assurances

These categories cover the essential components of licensing a foster family in terms of ensuring the applicant's capacity to care for a child in foster care, and also provide parameters for licensing the physical home of the family to ensure it is appropriate and safe for a child in foster care.

The National Model Family Foster Home Licensing Standards, based on the NARA Standards, are designed to be broad and flexible enough to respond to individual circumstances, state and tribal jurisdictions, and help ensure children in out-of-home care have safe and appropriate homes. The standards do not include the many other agency practices for how to conduct assessments, good practice standards, guidelines on re-licensing, or other requirements that must be undertaken with licensing foster family homes. In addition, there are numerous state and federal laws that agencies must consider when licensing foster family homes that we did not address. We encourage

agencies to utilize best practices, such as engaging tribal communities or others as appropriate in licensing families; however, these standards do not address such practices.

### III. Summary of the Proposed National Model Foster Care Licensing Standards

Subject Standard	Standard and Summary
<b>Foster Home Eligibility</b>	<p><b>A. Foster Home Eligibility:</b> A family foster home license includes the following:</p> <p><b>a. Threshold Requirements</b></p> <ul style="list-style-type: none"> <li>i. Applicants must be age 18 or older.</li> <li>ii. Applicants must have income or resources to make timely payments for shelter, food, utility costs, clothing, and other household expenses prior to the addition of a child or children in foster care.</li> <li>iii. Applicants must be able to communicate with the child in the child's own language and applicants must be able to communicate with the title IV-E agency, health care providers, and other service providers.</li> <li>iv. At least one applicant in the home must have functional literacy, such as having the ability to read medication labels.</li> </ul>
<b>Summary - Foster Home Eligibility</b>	<p>The proposed eligibility standards provide threshold requirements for a family foster home license to establish a first step in assessing the applicant's age, financial stability, and ability to communicate with the child and agency.</p> <p>We propose that adult applicants are financially stable to meet their family's needs prior to placing a child in the home. We proposed communication standards which are flexible for both the applicant and agency in that applicants must be able to follow agency and service provider instructions as well as communicate directly with a child. The proposed standards do not include requirements for English literacy so as not to dissuade potential foster family applicants. However, we propose functional literacy to ensure at least one of the applicants has the ability to read and write at the level necessary to participate effectively in the community in which they live.</p>
<b>Foster Home Eligibility – Physical and</b>	<p><b>b. Physical and Mental Health:</b> All applicants must have recent (conducted within the prior 12 months) physical exams from a licensed health care</p>

Subject Standard	Standard and Summary
<b>Mental Health</b>	<p>professional that indicate that the applicants are capable of caring for an additional child or children.</p> <ol style="list-style-type: none"> <li>i. All household members must disclose current mental health and/or substance abuse issues.</li> <li>ii. All household members must provide information on their physical and mental health history, including any history of drug or alcohol abuse or treatment.</li> <li>iii. The title IV-E agency may require further documentation and/or evaluation to determine the suitability of the home.</li> <li>iv. All children who are household members must be up to date on immunizations consistent with the recommendations of the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless the immunization is contrary to the child's health as documented by a licensed health care professional.</li> </ol>
<b>Summary - Foster Home Eligibility - Physical and Mental Health</b>	<p>The proposed physical and mental health standards ensure each applicant is physically, mentally, and emotionally capable of caring for an additional child or children through a required physical exam. We are not requiring that household members undergo a physical exam, however, they must provide a health history, including any history of drug or alcohol abuse or treatment.</p>
<b>Foster Home Eligibility – Background Checks</b>	<p><b>c. Background Checks</b></p> <ol style="list-style-type: none"> <li>i. Applicants must submit to criminal record and child abuse and neglect registry checks as required in section 471(a)(20) of the Social Security Act (the Act).</li> </ol>
<b>Summary – Foster Home Eligibility - Background Checks</b>	<p>The proposed background check standards mirror the requirements under section 471(a)(20) of the Act which requires title IV-E agencies to perform criminal and child abuse and neglect registry background checks as part of meeting the IV-E requirements. The state or tribe must not grant final approval to the applicant if a record check reveals a felony conviction for:</p> <ul style="list-style-type: none"> <li>• Child abuse or neglect;</li> <li>• Spousal abuse;</li> <li>• A crime against children (including child pornography);</li> <li>• A crime involving violence, including rape, sexual assault,</li> </ul>



Subject Standard	Standard and Summary
	<p>or homicide, but not including other physical assault or battery;</p> <ul style="list-style-type: none"> <li>Physical assault, battery, or a drug-related offense within the last five (5) years; and</li> </ul> <p>Title IV-E agencies must check any child abuse and neglect registry maintained by the state or tribe for information on any applicant and on any other adult living in the prospective foster home. Further, title IV-E agencies must request any other state or tribe in which any such applicant or other adult has resided in the preceding five (5) years.</p>
<b>Home Study</b>	<p><b>d. Home Study:</b> Applicant must have completed an agency home study, which is a written comprehensive family assessment in collaboration with the applicants to include the following elements:</p> <ol style="list-style-type: none"> <li>At least one scheduled on-site visit to assess the home to ensure that it meets the state, tribal and/or local standards applicable to the safety and care of the home.</li> <li>At least one scheduled in home interview for each household member to observe family functioning and assess the family's capacity to meet the needs of a child or children in foster care.</li> <li>The title IV-E agency has discretion on whether to interview or observe each household member based on his or her age and development.</li> <li>Multiple applicant references that attest to the capability of the applicant to care for the child, including at least one from a relative and one from a non-relative.</li> </ol>
<b>Summary- Home Study</b>	<p>We propose a broad home study standard that requires the title IV-E agency to conduct in-person and on-site interviews and obtain references for all applicants. Most states have home study requirements in law and regulation which include explicit home study and interview standards.</p>
<b>Foster Family Home Health and Safety</b>	<p><b>B. Foster Family Home Health and Safety</b></p> <p><b>a. Living Space:</b> The home must be a house, mobile home, housing unit or apartment occupied by an individual or a family. The home, grounds, and all structures on the grounds of the property must in a reasonable state of repair within community standards. The home must have:</p>

Subject Standard	Standard and Summary
	<ul style="list-style-type: none"> <li>i. A continuous supply of safe drinking water.</li> <li>ii. A properly operating kitchen with a sink, refrigerator, stove, and oven;</li> <li>iii. At least one properly operating bathroom with a toilet, sink and tub or shower.</li> <li>iv. Heating and/or cooling as required by the geographic area, consistent with accepted community standards and in safe operating condition.</li> <li>v. A working phone or access to a working phone in close walking proximity.</li> </ul> <p><b>b. Condition of the Home:</b> The applicants' home, grounds, and all structures on the grounds of the property must be properly maintained in a clean, safe, and sanitary condition and in a reasonable state of repair within community standards. The interior and exterior must be free from dangerous objects and conditions, and from hazardous materials. The home must meet the following requirements:</p> <ul style="list-style-type: none"> <li>i. Have adequate lighting, ventilation and proper trash and recycling disposal.</li> <li>ii. Be free from rodents and insect infestation.</li> <li>iii. Proper water heater temperature.</li> <li>iv. Weapons and ammunition (separately) stored, locked, unloaded, and inaccessible to children.</li> <li>v. Pets are vaccinated in accordance with state, tribal and/or local law.</li> <li>vi. Swimming pools, hot tubs, and spas must meet the following to ensure they are safe and hazard free (and additionally must meet all state, tribal and/or local safety requirements): <ul style="list-style-type: none"> <li>1. Swimming pools must have a barrier on all sides.</li> <li>2. Swimming pools must have their methods of access through the barrier equipped with a safety device, such as a bolt lock.</li> <li>3. Swimming pools must be equipped with a life saving device, such as a ring buoy.</li> <li>4. If the swimming pool cannot be</li> </ul> </li> </ul>

Subject Standard	Standard and Summary
	<p>emptied after each use, the pool must have a working pump and filtering system.</p> <p>5. Hot tubs and spas must have safety covers that are locked when not in use.</p> <p>vii. Prevent the child's access, as appropriate for his or her age and development, to all medications, poisonous materials, cleaning supplies, other hazardous materials, and alcoholic beverages.</p> <p>The title IV-E agency may include other specific standards as appropriate to their jurisdiction.</p>
<p><b>Summary – Foster Family Home Health and Safety</b></p>	<p><b>Foster Family Home Health and Safety</b></p> <p>These proposed standards apply to the foster family home itself, which includes the grounds and all structures found on the grounds. These proposed standards are written broadly to: 1) address the large amount of variance in home hazards across jurisdictions; and 2) prevent potential biases against rural or urban families. These standards are divided into two sections: Living space and condition of the home. The NARA standards as well as the state standards reviewed include specific requirements to address jurisdictional and geographical concerns. For example, requirements around water hazards such as swimming pools may not be a priority in all jurisdictions.</p> <p><b>a. Living Space</b></p> <p>The proposed living space standards are flexible in order to determine that a home includes basic essentials such as safe drinking water (which may include water from a municipal drinking source, a private well, or other source), proper kitchen and bath facilities and such. This ensures that the home is a suitable and safe foster family home, and allows potential foster families to reside in a variety of types of homes and locations, such as low-income or rural areas, may qualify as foster parents. A key factor is whether the home, grounds, and all structures on the grounds of the property are in a reasonable state of repair within community standards taking into account neighborhood norms while being mindful of any potential health and safety risks.</p> <p><b>b. Condition of the Home</b></p> <p>The proposed condition of the home standards, address the overall condition and safety of the home to ensure the home is safe and in a reasonable state of repair considering the community where the home is located. Housing and living arrangements must be safe</p>

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	and clean, and hazardous conditions mitigated. The proposed standards include specific safety requirements for pools, hot tubs and spas as these pose a particular preventable danger to children.
<b>Foster Home Capacity:</b>	<p><b>C. Foster Home Capacity:</b> The total number of children in foster care in a family foster home, must not exceed six (6) consistent with section 472(c)(1)(A)(ii)(III) of the Act. Per section 472(c)(1)(B) of the Act, the number of foster children cared for in a foster family home may exceed this numerical limitation at the option of the title IV-E agency for any of the following reasons:</p> <ol style="list-style-type: none"> <li>To allow a parenting youth in foster care to remain with the child of the parenting youth.</li> <li>To allow siblings to remain together.</li> <li>To allow a child with an established meaningful relationship with the family to remain with the family.</li> <li>To allow a family with special training or skills to provide care to a child who has a severe disability.</li> </ol>
<b>Summary- Foster Home Capacity</b>	<p><b>Foster Home Capacity</b></p> <p>The proposed foster home capacity standards mirror the requirements section 472(c)(1)(A)(ii)(III) that the total number of children in a foster family home, must not exceed six (6). Per section 472(c)(1)(B) of the Act, the title IV-E agency may make an exception to this numerical limitation for the following reasons:</p> <ul style="list-style-type: none"> <li>To allow a parenting youth in foster care to remain with the child of the parenting youth.</li> <li>To allow siblings to remain together.</li> <li>To allow a child with an established meaningful relationship with the family to remain with the family.</li> <li>To allow a family with special training or skills to provide care to a child who has a severe disability.</li> </ul>
<b>Foster Home Sleeping Arrangements</b>	<p><b>D. Foster Home Sleeping Arrangements:</b> Applicants must provide a safe sleeping space including sleeping supplies, such as mattress and linens, for each individual child, as appropriate for the child's needs and age and similar to other household members. Foster parents must not co-sleep or bed-share with infants.</p>
<b>Summary - Foster Home Sleeping Arrangements</b>	<p>The proposed sleeping arrangement standard ensures children in foster care sleep in safe and comfortable sleeping spaces with appropriate furnishings to meet their basic needs and ensure privacy. All children in the home must be treated equitably. For example, children in foster care should not sleep in public living spaces if other children have their own bedrooms. Further, sleeping arrangements should be age and developmentally</p>

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	<p>appropriate for the children who are placed in the home. Co-sleeping or bed-sharing, when a parent(s) and infant share a sleeping surface (such as a bed, sofa or chair), is prohibited.</p> <p>We included this prohibition because approximately 3,500 infants (children under 12 months of age) die annually in the United States from sleep-related causes, such as sudden infant death syndrome (SIDS) and accidental suffocation and strangulation in bed.<sup>2</sup> Both bed sharing with infants and sleeping with infants sleeping on couches or armchairs increase the risk of infant death, including sudden infant death syndrome (SIDS), entrapment, and suffocation. Room-sharing, i.e., when an infant shares a room with a parent(s), but sleeps on a separate sleeping surface is not prohibited as it is considered a safe sleep practice that is linked to a reduced risk of SIDS.<sup>3</sup></p>
<b>Emergency Preparedness, Fire Safety, and Evacuation Plans</b>	<p><b>E. Emergency Preparedness, Fire Safety, and Evacuation Plans:</b> The applicant must have emergency preparedness plans and items in place as appropriate for the home’s geographic location. The applicants’ home must meet the following fire safety and emergency planning requirements:</p> <ol style="list-style-type: none"> <li>Have at least one smoke detector on each level of occupancy of the home and at least one near all sleeping areas.</li> <li>Have at least one carbon monoxide detector on each level of occupancy of the home and at least one near all sleeping areas.</li> <li>Have at least one operable fire extinguisher that is readily accessible.</li> <li>Be free of obvious fire hazards, such as defective heating equipment or improperly stored flammable materials.</li> <li>Have a written emergency evacuation plan to be reviewed with the child and posted in a prominent place in the home.</li> <li>Maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home.</li> </ol>

<sup>2</sup> Task Force on Sudden Infant Death Syndrome. “SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment.” *Pediatrics*, 138, no. 5 (2016): 1, <http://pediatrics.aappublications.org/content/138/5/e20162938>.

<sup>3</sup> Ibid., 2-4.

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	g. Maintain first aid supplies.
<b>Summary - Emergency Preparedness, Fire Safety, and Evacuation Plans</b>	<b>Emergency Preparedness, Fire Safety, and Evacuation Plans</b> The proposed standards help protect children and household members from harm in the event of an emergency, a fire, or a need to evacuate. The proposed standards are written broadly allowing them to be tailored to unique emergencies, such as natural disasters, that may occur in specific jurisdictions. Safety procedures and emergency plans, and the communication thereof, increase the probability of safety and injury prevention for household members. Emergency readiness information provided by the Department of Homeland Security is available at <a href="http://www.ready.gov">http://www.ready.gov</a> .
<b>Transportation:</b>	<b>F. Transportation:</b> Applicants must ensure that the family has reliable, legal and safe transportation with safety restraints, as appropriate for the child. Reliable transportation would include a properly maintained vehicle or access to reliable public transportation, if one is owned; legal transportation would include having a valid driving license, insurance and registration as appropriate and safe transportation would include safety restraints and only adults in the home having a driving record in good standing transport the child.
<b>Summary- Transportation Standards:</b>	The proposed transportation standards focus broadly on the applicant having a reliable, legal, and safe mode of transportation for a child in foster care to attend appointments, visitation, and meetings. We also propose that only adults in the home be permitted to transport children in foster care and only those having a driving record in good standing. We specifically avoid proposing standards that could impact a foster parent based on geographic location and income. For example, some states require foster parents to have their own vehicle. However, applicants in states with a high urban population may not have access to or need a vehicle. Rather, they rely upon public transportation.
<b>Training</b>	<b>G. Training:</b> a. Applicants must complete pre-licensing training on the following topics: legal rights, roles, responsibilities and expectations of foster parents; agency structure, purpose, policies, and services; laws and regulations; the impact of childhood trauma; managing child behaviors; first aid (including cardiopulmonary resuscitation (CPR) for the ages of the children in placement) and medication administration; and the importance of maintaining meaningful connections between the child and parents, including regular visitation.

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	<p>Foster parents must participate in ongoing training to receive instruction to support their parental roles and ensure the parent is up to date with agency requirements. Further, this training may also include child-specific training and/or may address issues relevant to the general population of children in foster care.</p>
<b>Summary - Training</b>	<p>The proposed training standards include both pre-licensing and ongoing training and include mandatory training topics. The purpose of the pre-licensing training standards is to provide information to applicants so they can make an informed decision about their commitment to foster a child. In addition, the pre-service training is to prepare the applicant to be licensed as a foster parent. This includes training on the reasonable and prudent parent standard per section 471(a)(24) of the Act. The ongoing training is to ensure the parent receives ongoing instruction to support their parental roles and remain up to date on policies, requirements, and services. Therefore, there are no mandatory topics, as these depend on agency priorities and specific individual needs.</p>
<b>Foster Parent Assurances</b>	<p><b>H. Foster Parent Assurances:</b> Applicants must agree to comply with their roles and responsibilities as discussed with the title IV-E agency once a child is placed in their care. The title IV-E agency must require assurances including:</p> <ul style="list-style-type: none"> <li>a. Applicants will not use corporal or degrading punishment</li> <li>b. Applicants will not use any illegal substances, abuse alcohol by consuming it in excess amounts, or abuse legal prescription and/or nonprescription drugs by consuming them in excess amounts or using them contrary to as indicated.</li> <li>b. Applicants and their guests will not smoke in the family foster home, in any vehicle used to transport the child, or in the presence of the child in foster care.</li> <li>c. Applicants will adhere to the title IV-E agency's reasonable and prudent parent standard per section 472(c)(1)(A)(ii)(I) of the Act.</li> </ul>
<b>Summary - Foster Parent Assurances</b>	<p>There are four proposed foster parent assurances are broadly written to apply across title IV-E jurisdictions which cover corporal punishment, alcohol and drug use, the reasonable and prudent parent standard and smoking. Assurances help potential foster family to have a clear understanding of expectations prior to approval as a foster home, cover behaviors which cannot be verified as part of the home study and typically are expectations</p>

Subject Standard	Standard and Summary
	after a home is licensed. Title IV-E agencies may wish to develop additional assurances as appropriate to their jurisdiction.

Dated: July 24, 2018

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Steven Wagner,  
Acting Assistant Secretary  
for Children and Families.

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